

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

JAMES E. JUSTICE, II,

Plaintiff,

v.

PATRICIA G. JUSTICE,

Defendant.

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Case No. CIV-08-087-RAW

ORDER

Before the court is the motion of the plaintiff for leave to proceed in forma pauperis. The court finds that plaintiff has satisfied the requirements to so proceed. The court goes on, however, to sua sponte consider whether the complaint should be dismissed for failure to state a claim upon which relief may be granted. *See* 28 U.S.C. §1915(e)(2)(B)(ii).


Plaintiff sues the woman who is apparently still his wife under 42 U.S.C. §1983. In order to hold a private individual liable under §1983 for a constitutional violation requiring state action, a plaintiff must show that the individual's conduct is fairly attributable to the State. *Pino v. Higgs*, 75 F.3d 1461, 1465 (10th Cir.1996). Here, plaintiff appears to allege that the defendant reported some of his conduct to the police, resulting in plaintiff's arrest. A private party who reports criminal activity to state officials "who then take whatever action they believe the facts warrant" cannot be held liable as a "state actor" under §1983. *See Lee v. Town of Estes Park, Colo.*, 820 F.2d 1112, 1115-16 (10th Cir.1987); *see also Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442, 1454 (10th Cir.1995). Plaintiff has failed to state a federal claim.

It is the Order of the Court that the motion of the plaintiff for leave to proceed in forma pauperis (#3) is hereby GRANTED. On its own motion, the court orders the complaint dismissed without prejudice.

ORDERED THIS 28th DAY OF MARCH, 2008.

Dated this 28th Day of March 2008.

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Ronald A. White
United States District Judge
Eastern District of Oklahoma